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September 22, 2021

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Re: Force Majeure Request Tokai Carbon

This is a request, as a supplement to our August 12, 2021 request, pursuant to Paragraph 70 the Consent Decree, lodged on December 22, 2017, among the United States of America, the Louisiana Department of Environmental Quality, the State of Texas, and Sid Richardson Carbon, Ltd. (hereinafter the “CD”). Tokai Carbon CB (“Tokai”) is a successor in interest under the terms of the CD.

As we noted in our prior discussions and correspondences, Tokai had experienced a significant delay in fulfilling its obligations under certain provisions of the CD at the Borger facility with respect to the installation and operation of the Wet Gas Scrubber emission control system (“WGS”) and a Selective Catalytic Reduction emission control system (“SCR”). At the prior notification, Tokai anticipated meeting these obligations on August 29, 2021. Subsequent to our August 12, 2021 request, Tokai experienced further Force Majeure events, which we discussed with DOJ. These further events have resulted in a delay in Tokai fulfilling its obligations under certain provisions of the Consent Decree, specifically:

- Paragraphs 17, 23, 24, 27 and 31 requiring Tokai to install by April 1, 2021, and continuously thereafter, Continuously Operate, a Wet Gas Scrubber emission control

system (“WGS”) and a Selective Catalytic Reduction emission control system (“SCR”) at its Borger facility to achieve reductions in sulfur dioxide and nitrogen oxide emissions from affected process sources;

- Paragraph 32 requiring Tokai to install, and continuing thereafter, Continuously Operate a WGS to achieve reductions in particulate matter emissions from process sources; and
- Paragraph 37 of the Consent Decree prohibiting Tokai from using flares at its Borger Facility beginning April 1, 2021.

Tokai has used its best efforts to mitigate the impact of this Force Majeure event and requests that the deadlines for the above obligations be extended to September 9, 2021. Tokai would show the following in support of this request.

**A Force Majeure Event Has Occurred Necessitating
an Extension of Certain Compliance Deadlines**

Paragraph 70 of the CD reads:

“Force Majeure,” or the purposes of this Consent Decree, is defined as any event arising from causes beyond the control of Defendant, its Contractors, or entity controlled by the Defendant that causes a delay or impediment to performance in complying with any obligation under the Consent Decree despite the Defendant’s best efforts to fulfill the obligation including, but not limited to, delays caused by labor strikes, transport delays, and civil unrest, depending on the circumstances of the particular claim. The requirement that Defendant exercises best efforts to fulfill the obligation includes using best efforts to anticipate any potential Force Majeure event and best efforts to address the effects of any such event, (a) as it is occurring, and (b) after it has occurred to prevent or minimize any resulting delay and/or violation and/or emissions during such event to the greatest extent possible. Force Majeure does not include Defendant’s financial inability to perform any obligations under this Consent Decree. Unanticipated or increased costs or expenses associated with the performance of Defendant’s obligations under the Consent Decree shall not constitute circumstances beyond Defendant’s control, nor serve as the basis for an extension of time under this Section and shall not constitute an event of Force Majeure.”

Tokai bases its request on several factors that occurred during the time between our August 12, 2021 letter and September 9, 2021, consisting of adverse weather events, unanticipated and unavoidable mechanical issues, and the resulting cascading scheduling issues arising from these occurrences.

As we discussed with DOJ, as the Borger facility was working to meet the anticipated date of August 29, 2021, the facility experienced high wind events on:

| | |
|----------|-------|
| 08/20/21 | 4 hrs |
| 08/22/21 | 4 hrs |
| 08/23/21 | 8 hrs |

| | |
|----------|--------|
| 08/24/21 | 5 hrs |
| 08/27/21 | 18 hrs |

The work on the new emission control equipment involves the use of cranes. These cranes were used to lift large, heavy pieces of equipment. For safety reasons, these cranes are unable to work in high wind (at times in excess of 40 mph) events. At the time of the high wind events, the cranes were primarily being used to deliver catalyst to the top of the structure. The cranes were also being used for mechanical work to finish pipe work and closing up vessels at elevated levels. In total, these high wind events caused 39 hours of delay in schedule. The facility worked around the clock, weather permitting, but the start/stop nature of the wind events caused delays in the schedule.

Following the wind delays, the facility anticipated to start scrubbing on or about September 2, 2021. However, the boilers had been cold for some period of time during the installation of the emission control equipment. The boilers took significant time to reach normal operation from a cold start up. This is because the boilers had to be heated up slowly and then produce “clean” steam; steam could not be routed to the steam turbine until it was “clean” because otherwise it would damage the turbine blades.

The facility was able to start the scrubbers on Friday, September 3, 2021 and was able to slowly shift emissions from the flares to the scrubbers. On September 3, 2021, the facility ceased to use two flares.

As the facility continued to shift emissions from the flares to the scrubbers, the facility had to restart various fans that move tail gas into the boiler system. As the boilers and the scrubbers came back online on over the weekend of September 3-6, 2021 (this was a holiday weekend for the Labor Day holiday), two of the three fans started as anticipated. However, the Unit 3 fan was started but was out of balance. This fan could not run until it was rebalanced.

The facility determined that while the fan for Unit 3 was down and cool for the installation of the emission control equipment, the fan shaft bowed causing the fan to be out of balance. The facility contacted a local contractor with the skilled personnel to rebalance the fan. The one contractor able to do the work was out of town for the Labor Day Holiday and was booked on September 7, 2021. The contractor came on site on September 8, 2021 to rebalance the fan. The contractor remained on site until the fan was fixed and rebalanced. Work was completed at 2:00 AM on September 9, 2021. The facility ceased flaring Unit 3 shortly thereafter on September 9, 2021.

Tokai Undertook Best Efforts to Comply with the CD
Despite the Force Majeure Event, and Made Every Effort to
Prevent and Minimize the Delay

After the initial COVID delays, Tokai undertook its best efforts to avoid and minimize the delays caused by the Force Majeure event, as detailed in our August 12, 2021 letter. These efforts including continuing to work continuously (24 hours per day/7 days per week) at the Borger facility. Most recent issues regarding the weather and issues in restarting the equipment were beyond Tokai’s control and Tokai could identify no alternatives to reduce these delays. In particular, on the last issue regarding fan rebalancing, Tokai considered whether an alternate

contractor could be found, but given the holiday weekend, bringing in a contractor from outside the Borger area was not feasible and would have been unlikely to get someone to the facility more quickly.

**In the alternative, Tokai has met the Section 77 criteria
to establish an affirmative defense to stipulated penalties
with respect to the fan balancing issue.**

Although Tokai believes that the facts and circumstances above constitute a Force Majeure event, Tokai is also discussing, based on discussions with DOJ and only as an alternative point, the Section 77 criteria to establish an affirmative defense to any stipulated penalties. Under Section 77 of the CD, to assert an affirmative defense to stipulated penalties, Tokai must demonstrate certain factors set out below. Tokai has included in the table below a discussion of how Tokai met these factors:

| Consent Decree Section 77 Provision | Discussion |
|--|---|
| a.The excess emissions were caused by a sudden, unavoidable breakdown of technology, beyond Defendant's control; | The delay associated with fan balancing with a sudden problem that Tokai could not have avoided. The "bowed" and subsequent out of balance condition occurred because the fan became cold. This could not be avoided because the fan had to be shut off for the installation of the emission control equipment. The fan became out of balance suddenly when the unit was restarted and this condition was unknown until the unit was restarted. |
| b.The excess emissions did not stem from any activity or event that was foreseeable and avoidable, nor could have been avoided by operation and maintenance practices in accordance with manufacturers' specifications and good engineering and maintenance practices; | The out of balance fan condition was not anticipated. The facility could not test for the condition before it started the fan in anticipation of starting the flare. The fan was shut down and restarted in accordance with manufacturers' specifications and good engineering and maintenance practices. This situation was unavoidable. |
| c.The air pollution control equipment and processes were maintained and operated in a manner consistent with good practice for minimizing emissions; | The fan had been operated and restarted in a manner consistent with good practices. |
| d.Repairs were made as expeditiously as practical when Defendant knew or should have known that the applicable 3-hour | The inability to start the fan only became apparent on September 3, 2021. The facility immediately began to locate a contractor. As |

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|---|--|
| Average Emissions Limit, or a 7-day Rolling Average Emissions Limit was being or would be exceeded; | discussed above, only one contractor had appropriately skilled personnel in the area but this person was unavailable over the holiday weekend and could not be on site until September 8, 2021. |
| e. Defendant took measures to limit the amount and duration of the excess emissions (including any bypass) in a manner consistent with good practice for minimizing emissions; | Tokai took measure to minimize the emissions by running two of the three fans to route approximately 75% of its gases to the scrubbers. |
| f. All practical steps were taken to minimize the impact of the excess emissions on ambient air quality; | Tokai took measure to minimize the emissions by running two of the three fans to route approximately 75% of its gases to the scrubber. |
| g. Relevant emission monitoring systems were kept in operation to the extent practical; | The flare's pilot was on while the flare was in operation. |
| h. Defendant's actions in response to the excess emissions were documented by properly signed or otherwise validated contemporaneous operating logs, if applicable, or other relevant evidence; | The flare's pilot on signal was documented while the flare was in operation. |
| i. The excess emissions were not part of a recurring pattern indicative of inadequate design, operation, or maintenance; and | The out of balance fan issue was a unique issue that arose in the unique circumstance of the fan being out of operation for an extended period for the installation of the emission control equipment. |
| j. Defendant properly and promptly notified Plaintiffs as required by this Consent Decree. | Tokai maintained regular contact with DOJ throughout the event and discussed the issues and measures being taken to address them. |

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Conclusion

Due to all of the foregoing, Tokai hereby invokes Paragraph 70 of the CD and requests that the pending extension of certain deadlines until August 9 be changed to September 9, 2021 at the Borger Facility. This request arises from events beyond Tokai's control. The COVID pandemic and the outbreak at the Borger Facility (detailed in our August 12, 2021 letter), followed by weather events, and subsequent equipment issues have made it impossible to comply with the deadlines originally negotiated in the CD and the pending extension. The COVID situation at the Borger Facility remains an evolving issue.

We appreciate your consideration of our request. As always, we are available to answer any questions or provide additional information if needed.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Long B. Nguyen', with a stylized flourish at the end.

Long B. Nguyen